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NO. PD-0005-18

IN THE

COURT OF CRIMINAL APPEALS

FILED
COURT OF CRIMINAL APPEALS
7/23/2018
DEANA WILLIAMSON, CLERK

FOR THE STATE OF TEXAS

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MARGARET FAYE LITCHFILED — APPELLANT

VS.

THE STATE OF TEXAS — APPELLEE

****

APPELLANT'S BRIEF ON PETITION FOR DISCRETIONARY REVIEW

**On Petition for Discretionary Review
From the Court of Appeals,
Sixth District of Texas at Texarkana,
In Cause No. 06-17-00007-CR, Affirming the Conviction
In Cause No. 15-22720 from the
52nd Judicial District Court of Coryell County, Texas**

**JAMES H. KREIMEYER
ATTORNEY FOR APPELLANT
P.O. BOX 727
BELTON, TEXAS 76513
(254)939-9393
(254)939-2870 FAX
T.S.B. #11722000
jhkreimeyer@gmail.com**

IDENTITY OF PARTIES AND COUNSEL

Judge at Trial:
Hon. Trent D. Farrell
52ND Judicial District
P.O. Box 1155
Gatesville, Texas 76528

Prosecutors:
Dusty Boyd, Dist. Att.
Scott Stevens, Asst. DA
P.O. 919
Gatesville, Texas 76528

Defense Attorney at Trial
Robert O. Harris
Attorney at Law
P.O. Box 169
Killeen, TX 76540

Michael Magaña
Attorney at Law
2315 S. Loop 121
Belton, TX 76513

Attorney for Appellant:
James H. Kreimeyer
Attorney at Law
P.O. Box 727
Belton, TX 76513

Attorney for Appellee:
Dusty Boyd
District Attorney
P.O. Box 919
Gatesville, Texas 76528

Appellant:
Margaret Faye Litchfield
TDCJ#02101926
Mountain View Unit
2305 Ransom Rd.
Gatesville, TX 76528

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NO.PD-0005-18

IN THE

COURT OF CRIMINAL APPEALS

FOR THE STATE OF TEXAS

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MARGARET FAYE LITCHFIELD APPELLANT

VS.

THE STATE OF TEXAS APPELLEE

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APPELLANT'S BRIEF ON PETITION FOR DISCRETIONARY REVIEW

STATEMENT OF THE CASE

The State of Texas indicted Appellant in cause number 22,720 in the 52nd District Court of Coryell County, Texas, for the offense of Murder. (Cl. R. at 7) Appellant was found guilty of the indicted offense. (Cl. R. at 117) On November 22, 2016 a hearing on punishment was conducted and, after hearing evidence from the State and Appellant, the trial court assessed Appellant a sixty year sentence in the Texas Department of Criminal Justice—Institutional division. (18 R.R. at 118) After

transfer to the Sixth Court of Appeals in Texarkana, Appellant's conviction was affirmed by that court, in an unpublished opinion. *Litchfield v. State*, No. 06-17-00007-CR, Tex. Court of Appeals at Texarkana, 2017 WL 5894314, November 30, 2017. Appellant filed a Petition for Discretionary Review with the Court of Criminal Appeals on January 23, 2018, which was granted by that court on June 6, 2018. An extension having been granted, Appellant's brief is due on or before July 23, 2018,

STATEMENT REGARDING ORAL ARGUMENT

No oral argument will be permitted.

ISSUE PRESENTED

In finding the evidence legally sufficient, did the Sixth Court of Appeals fail to consider: was the jury rationally justified in finding guilt beyond a reasonable doubt?

STATEMENT OF FACTS

In affirming Appellant's conviction, the Sixth Court of Appeals recited in its opinion what evidence was before the jury.

When the investigation into the death of Mr. Litchfield was reopened, Ranger Bobo conducted the new investigation. Bobo believed there were inconsistencies between Appellant's written statement (20 R.R. St.Ex.119) and Helms account of Appellant's unrecorded interview. Bobo decided to review the financial records of the Litchfields. Without stating the basis for his opinion, Bobo believed there was a financial motive to murder her husband. *Litchfield*, 2017 WL 5894314 at *9. (15 R.R. at 29)

THE FINANCIAL MOTIVE

Appellant had asked the mail carrier to hold a letter from a credit card company, which Appellant had picked up at the post office. She had bought something expensive and was keeping the amount from her husband. Likewise, at the bank where a boat loan was pending, Appellant had asked to delay to loan meeting for a day to allow her to explain to Mr. Litchfield what was going on before applying for the loan. There was concern about Mr. Litchfield finding out about any other loans. Both Mr.

Litchfield and Appellant were co-signatories on the Litchfield Construction account. After discussing the credit card charges, Mr. Litchfield called the bank to determine how much the boat was worth. The amount of the charge on the Discover credit card was $500.00. *Litchfield,* 2017 WL 5894314 at *10.

OPPORTUNITY TO KILL AND INCONSISTENCIES

The time of death was critical. Two pathologists, Dr. Crowns and Dr. Guileyardo, were called as witnesses. Crown did not perform the actual autopsy on Mr. Litchfield, but from examining the reports he put a range of time of death from 6 hours to 18 hours before found, but would put it more in the time frame from 8 to 12. Guileyardo, who actually performed the autopsy, contradicted Crowns' testimony by explaining that fixed rigor and lividity established only that a person had been dead for a few hours and that no precise time of death could have been established. *Litchfield,* 2017 WL 5894314 at n. 16.

Bobo recalled in her 1999 statement, Appellant said she was awakened by Mr. Litchfield at 5:00 a.m., when she had told Helms that a Ms. Hammack called and woke Mr. Litchfield. In 2014 Appellant said she woke up around 6:00 or 6:30 a.m. In 2015 Appellant had said she woke up at 6:00 a.m. *Litchfield,* 2017 WL 5894314 at *12

Bobo believed there was some problem with the time from Appellant leaving home and arriving to clean the Wood's residence. Appellant attributed the delay to a rising creek. Bobo said there was minimal rainfall in the area. *Litchfield,* 2017 WL 5894314 at *15 (15 R.R. at 29)

The next inconsistency noted by Bobo was Appellant had last seen Mr. Litchfield drinking coffee at the kitchen bar, smoking marijuana. According to Bobo, Appellant had told the grand jury she last saw Mr. Litchfield at the kitchen bar, but not drinking coffee. In her 1999 statement, Appellant had written she last saw Mr. Litchfield in the bedroom where she kissed him goodbye.

Bobo speculated that Mr. Litchfield's .22 was used to kill him. He believed Appellant picked up the gun from the nightstand and shot him. (15 R.R. at 32,33) He had not considered the possibility that someone could have entered the home with their weapon and had simply stolen Mr. Litchfield's gun.

Helms, however, testified that he did not know whether the weapon that shot Raymond was his own .22 pistol and that one would have to speculate to come to that conclusion. *Litchfield v. State*, 2017 WL 5894314, at *13 (15 R.R. at 235)

The Court of Appeals concluded: When we view this evidence in a light most favorable to the verdict of guilt, we must conclude that the jury's verdict was supported by the cumulative force of all of the incriminating circumstances. Because we find the evidence legally sufficient to establish (Appellant's) identity as the perpetrator, we overrule her sole point of error. *Litchfield v. State*, 2017 WL 5894314, at *15

ISSUE PRESENTED (Restated)

In finding the evidence legally sufficient, did the Sixth Court of Appeals fail to consider: was the jury rationally justified in finding guilt beyond a reasonable doubt?

SUMMARY OF THE ARGUMENT

Considering all of the evidence in the light most favorable to the verdict, was a jury rationally justified in finding guilt beyond a reasonable doubt. This reformulated factual sufficiency standard from *Brooks v. State*, 323 S.W.3d 893 (Tex. Crim. App. 2010). In viewing the evidence, which was based on speculation and opinions, in the light most favorable to the verdict; the jury was not rationally justified in finding Appellant guilty.

ARGUMENT

In *Clewis v. State*, the Court of Criminal Appeals adopted the following test for factual sufficiency of the evidence: The court of appeals "views all the evidence without the prism of 'in the light most favorable to the

prosecution.' ... [and] set[s] aside the verdict only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust." This holding harmonizes the criminal and civil jurisprudence of this State with regard to appellate review of questions of factual sufficiency. *Clewis v. State*, 922 S.W.2d 126, 129 (Tex. Crim. App. 1996) The Court of Criminal Appeals adopted this reasoning from *Stone v. State*, 823 S.W.2d 375 (Tex. App. at Austin 1982 pet. ref'd, untimely filed)

In *Brooks v. State*, 323 S.W.3d 893 (Tex. Crim. App. 2010) the Court of Criminal Appeals held that the *Jackson v. Virginia* 443 U.S. 307, (1979) legal-sufficiency standard is the only standard that a reviewing court should apply in determining whether the evidence is sufficient to support each element of a criminal offense that the state is required to prove beyond a reasonable doubt, and factual-sufficiency standard of Clewis v. State is discarded; overruling *Clewis v. State*, 922 S.W.2d 126. *Brooks v. State*, 323 S.W.3d 893 (Tex. Crim. App. 2010)

"Considering all of the evidence in the light most favorable to the verdict, was a jury rationally justified in finding guilt beyond a reasonable doubt." This is the Jackson v. Virginia legal-sufficiency standard. There is, therefore, no meaningful distinction between the Jackson v. Virginia legal-sufficiency standard and the Clewis factual-sufficiency standard, and these two standards have become indistinguishable. Substituting "in the light most favorable to the jury's verdict" for the "a neutral light" component of this formulation of the standard, as our cases have done by recognizing that "the jury is the sole judge of a witness's credibility, and the weight to be given the testimony," the factual-sufficiency standard may be reformulated as follows: "Considering all of the evidence in the light most favorable to the verdict, was a jury rationally justified in finding guilt beyond a reasonable doubt." *Brooks*, 323 S.W.3d at 902

As recognized by the Court of Appeals, the challenged element of proof in this cause, is the identity of the killer. *Litchfield v. State*, 06-17-00007-CR, 2017 WL

5894314, at *2 (Tex. App.—Texarkana Nov. 30, 2017, pet. granted)

Factual-sufficiency standard as now reformulated may be applied to factual circumstances as found in Appellant's trial: "…was a jury rationally justified in finding guilt beyond a reasonable doubt."

An appellate court reviews legal and factual sufficiency challenges using the same standard of review. Under this standard, evidence is insufficient to support a conviction if, considering all the record evidence in the light most favorable to the verdict, no rational factfinder could have found that each essential element of the charged offense was proven beyond a reasonable doubt. Viewed in the light most favorable to the verdict, the evidence is insufficient under this standard in two circumstances: (1) the record contains no evidence, or merely a "modicum" of evidence, probative of an element of the offense; or (2) the evidence conclusively establishes a reasonable doubt. *Kiffe v. State*, 361

S.W.3d 104, 107–08 (Tex. App.—Houston [1st Dist.] 2011, pet. ref'd)

It is Appellant's position that, considering all of the evidence in the light most favorable to the verdict, the jury was not rationally justified in finding Appellant guilty beyond a reasonable doubt. The Court of Appeals, in affirmed Appellant's conviction did not consider this newly formulated standard as applied to the factual sufficiency of the evidence purporting to support the conviction of Appellant.

As the District Attorney pointed out to the jury in his final argument: "I bet you feel like a dump truck backed up to you and poured all these names and information and evidence out onto you." (16 R.R. at 74)

The end result of this "evidence dump" is to show possibly incriminating evidence and inconsistencies, from which a jury could not be rationally justified in finding guilt beyond a reasonable doubt.

By looking at the review of the evidence Ranger Bobo was allowed to put before the jury, it is a summary of the testimony which the jury could consider.

One of the purported facts Bobo relied upon to believe Appellant was the shooter was the fact the house wasn't broken into. There was no forced entry. (15 R.R. at 32) There was evidence that when Appellant left the home, the door was not locked because Mr. Litchfield expected company to play dominos. Appellant's written statement given on February 4, 1999. (20 R.R. St.Ex.119 p.2)

The change for the loan appointment was, apparently, based on a $500.00 charge on a credit card made by Appellant, which she wished to discuss with Mr. Litchfield. This demonstrates no realistic motive to destroy the breadwinner of the marriage. Overlooked in the interpreting of the evidence concerning the use by Appellant of funds from the business, those funds were community property.

Is whether Appellant's testimony that she last saw Mr. Litchfield in bed or in the kitchen having coffee and smoking, after the passage of seventeen to eighteen years could account for these differences. Are these the inconsistencies relied upon to support a finding of guilty beyond a reasonable doubt by a rational jury? A jury may not draw conclusions based on pure speculation. Speculation, unlike a reasonable inference, is not sufficiently based on the evidence to support a finding beyond a reasonable doubt. *Harris v. State*, 532 S.W.3d 524, 528 (Tex. App.—San Antonio 2017, no pet.)

Crowns' testimony caused Bobo to reexamine Margaret's account of the day of the murder. In the 1999 written statement, Margaret said she was awakened by Raymond at 5:00 a.m. when she had previously told Helms that Hammack called and woke Raymond. According to Bobo, Margaret told the 2014 grand jury, fifteen years later, that she woke up around 6:00 or 6:30 a.m., and in 2015, said she woke up at 6:00 a.m. *Litchfield* at *12.

The opinion of Dr. Crowns caused Bobo to consider the time of death, despite the opinion of Dr. Guileyardo that no precise time of death could have been established. *Litchfield* n. 16. Bobo cherry picked the testimony that supported his opinion that Appellant was the shooter.

The only thing missing from the house was a .22 caliber semiautomatic pistol belonging to Mr. Litchfield. Bobo believed it was the murder weapon. The Court of Appeals recognized Bobo had not considered the possibility that someone could have entered the home with their weapon and had simply stolen Mr. Litchfied's gun. Another law enforcement witness, Helms, testified he did not know whether the weapon that shot Mr. Litchfield was his own .22 pistol and one would have to speculate to come that conclusion. *Litchfield* at *13 In St.Ex. 117 a firearms expert, Robert Poole, listed 728 .22 caliber firearms which could have been used. 12 R.R. at 50,51)

The inconsistencies and "changing and altering the facts or their information" as outlined by Bobo do not

seem to be anymore than his forming opinions and speculating on purported facts to support his conclusion Appellant killed her husband.

Juries are permitted to draw reasonable inferences from the evidence, but they are not permitted to draw conclusions based on speculation. Speculation is the mere theorizing or guessing about the possible meaning of the facts and evidence presented. On the other hand, "an inference is a conclusion reached by considering other facts and deducing a logical consequence from them." A conclusion that is reached by speculation may not seem completely unreasonable, but it is not sufficiently based upon facts or evidence to support a conviction beyond a reasonable doubt. *Gross v. State*, 380 S.W.3d 181, 188 (Tex. Crim. App. 2012)

The relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson*

v. Virginia, 443 U.S. 307, 319 (1979). *Cary v. State*, 507 S.W.3d 761, 766 (Tex. Crim. App. 2016)

The testimony, as set out above, used by Bobo to allow him to give his opinion of the guilt of Appellant, is based speculation and his interpretation of fact which do not rationally prove Appellant guilty.

To correctly apply the Jackson standard, it is vital that courts of appeals understand the difference between a reasonable inference supported by the evidence at trial, speculation, and a presumption. A presumption is a legal inference that a fact exists if the facts giving rise to the presumption are proven beyond a reasonable doubt. For example, the Penal Code states that a person who purchases or receives a used or secondhand motor vehicle is presumed to know on receipt that the vehicle has been previously stolen, if certain basic facts are established regarding one's conduct after receiving the vehicle. Tex. Penal Code § 31.03(c)(7). A jury may find that the element of the offense sought to be presumed exists, but it is not bound to find so. Tex. Penal Code

§ 2.05. In contrast, an inference is a conclusion reached by considering other facts and deducing a logical consequence from them. Speculation is mere theorizing or guessing about the possible meaning of facts and evidence presented. A conclusion reached by speculation may not be completely unreasonable, but it is not sufficiently based on facts or evidence to support a finding beyond a reasonable doubt. *Hooper v. State*, 214 S.W.3d 9, 16 (Tex. Crim. App. 2007)

In *Gross v. State*, 380 S.W.3d 181 (Tex. Crim. App. 2012) in a finding of insufficient evidence to convict Gross as a party, the Court of Criminal Appeals confirmed: "A conclusion that is reached by speculation may not seem completely unreasonable, but it is not sufficiently based upon facts or evidence to support a conviction beyond a reasonable doubt". *Gross v. State*, 380 S.W.3d 181, 188 (Tex. Crim. App. 2012)

The evidence considered by Bobo, at best, was: speculation which is mere theorizing or guessing about the possible meaning of facts and evidence presented. A

conclusion reached by speculation may not be completely unreasonable, but it is not sufficiently based on facts or evidence to support a finding beyond a reasonable doubt.

That a loving wife, who depended on her husband for financial support, would kill him over a possible $500.00 credit card charge is at least unreasonable.

Since *Brooks v. State*, did away with factual sufficiency of the evidence and pronounced "Considering all of the evidence in the light most favorable to the verdict, was a jury rationally justified in finding guilt beyond a reasonable doubt." This is the Jackson v. Virginia legal-sufficiency standard. There is, therefore, no meaningful distinction between the Jackson v. Virginia legal-sufficiency standard and the Clewis factual-sufficiency standard, and these two standards have become indistinguishable. *Brooks v. State*, 323 S.W.3d 893, 902 (Tex. Crim. App. 2010)

Because the Court of Appeals did not consider whether the evidence in Appellant's trial was such that the jury

was not rationally justified in finding Appellant guilty of killing her husband. Under Brooks, the evidence is insufficient and an acquittal should be entered under *Burks v. United States*, 437 U.S. 1 (1978)

PRAYER

Wherefore, premises considered, Appellant prays her conviction be reversed because considering all of the evidence in the light most favorable to the verdict, the jury was not rationally justified in finding Appellant guilty beyond a reasonable doubt and an acquittal be granted under *Burks v. U.S.* supra

Respectfully submitted,

/s/James H. Kreimeyer
James H. Kreimeyer
Attorney for Appellant
P.O. Box 727
Belton, TX 76513
254-939-9393 Fax: 939-2870
TSB#11722000
jhkreimeyer@gmail.com

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the length limitations of Texas Rule of Appellate Procedure 9.4(i)(3) because this brief contains 2,690 words, excluding the parts of the brief exempted by Texas Rule of Appellate Procedure 9.4(i)(1); a number which is less than the 4,500 words allowed under Rule 9.4(i)(2)(D).

I also certify that this brief complies with the typeface requirements of Texas Rule of Appellate Procedure 9.4€ because this brief has been written with a conventional typeface using a 14-point font (with footnotes no smaller than 12-points) using Microsoft Office Word 2010 (version 14), in Courier New font.

/s/James H. Kreimeyer
JAMES H. KREIMEYER

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Appellant's Brief on Petition for Discretionary Review was delivered to Dusty Boyd, District Attorney, Coryell County, Gatesville, Texas 76528, on the 23rd day of July 2018.

/s/James H. Kreimeyer
JAMES H. KREIMEYER
ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Appellant's Brief on Petition for Discretionary Review was sent by U.S. Mail to Lisa C. McMinn, State Prosecuting Attorney, P.O. Box 13046, Austin, TX 78711 on the 23rd day of July 2018.

/s/James H. Kreimeyer
JAMES H. KREIMEYER
ATTORNEY FOR APPELLANT